



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0810]

RIN 1625-AA00

Safety Zone; Delaware River Fireworks Display, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Delaware River in the vicinity of Penn's Landing, Philadelphia, PA, from 8:30 p.m. through 9:30 p.m. on September 1, 2018, during the Delaware River Waterfront Corp Fireworks Display. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the boating public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in or remaining within the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective from 8:30 p.m. through 9:30 p.m. on September 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0810 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, e-mail

Thomas.J.Welker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. The rule must be established by September 1, 2018, to serve its purpose of ensuring the safety of spectators and the general public from hazards associated with the fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with a fireworks display in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks display on September 1, 2018, will be a safety concern for anyone within a 500-yard radius of the fireworks barge, which will be anchored in approximate position 39°56'49.66"N, 075°08'11.69"W. This rule is needed to protect persons, vessels and the public near the fireworks barge during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:30 p.m. through 9:30 p.m. on September 1, 2018, for the navigable waters in the vicinity of Penn's Landing, Philadelphia, PA, during a fireworks display from a barge. The event is scheduled to take place at approximately 9 p.m. on September 1, 2018. The safety zone will extend 500 yards around the barge, which will be anchored at approximate position 39°56'49.66"N, 075°08'11.69"W. Persons or vessels will not be permitted to enter, transit through, anchor in or remain within the safety zone without obtaining permission from the COTP or the COTP's designated representative. If authorization to enter, transit through, anchor in or remain within the safety zone is granted by the COTP or the COTP's designated representative, all persons and vessels receiving such authorization must comply with the

instructions of the COTP or the COTP's designated representative. The Coast Guard will provide public notice of the safety zone by Broadcast Notice to Mariners and by on-scene actual notice.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Delaware River for one hour during the evening when vessel traffic is normally low. Although persons and vessels may not enter, transit through, anchor in or remain within the safety zone without authorization from the COTP or a designated representative of the COTP, they may operate in the surrounding area during the enforcement period. Additionally, persons and vessels will be able to enter, transit through, anchor in or remain within the safety zone if

authorized by the COTP or the COTP's designated representative. The Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners, and by on-scene actual notice from designated representatives.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in or remaining within a limited area on the navigable water in the Delaware Bay, during a fireworks display lasting one hour. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received

without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0810 to read as follows:

§ 165.T05-0810 Safety Zone; Delaware River Fireworks Display, Delaware River, Philadelphia, PA.

(a) **Location.** The following area is a safety zone: all navigable waters of the Delaware River in the vicinity of Penn's Landing, Philadelphia, PA, within 500 yards of the fireworks barge anchored in approximate position 39°56'49.66"N, 075°08'11.69"W. All coordinates are based on Datum NAD 1983.

(b) **Definitions.** As used in this section, **designated representative** means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's designated representative via VHF-FM channel 16 or 215-271-4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) Enforcement period. This zone will be enforced from approximately 8:30 p.m. through 9:30 p.m. on September 1, 2018.

Dated: August 23, 2018

S. E. ANDERSON,
Captain, U.S. Coast Guard
Captain of the Port Delaware Bay.
[FR Doc. 2018-18596 Filed: 8/27/2018 8:45 am; Publication Date: 8/28/2018]